

## Message Text

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ACTION AID-31

INFO OCT-01 AF-10 ADP-00 OPIC-12 EB-11 L-03 IGA-02 OMB-01

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FM AMEMBASSY KHARTOUM

TO SECSTATE WASHDC 6981

LIMITED OFFICIAL USE KHARTOUM 1861

E.O. 11652: N/A

TAGS: EAID

SUBJECT: OPIC (WALSH) CLAIM

REF: STATE 148260

1. BEGIN SUMMARY. ANY EFFORT AT REIMBURSEMENT SHOULD BE ON USG-GOS BASIS INITIATED BY AIDE-MEMOIRE. EMB WOULD (A) APPRECIATE CERTAIN CLARIFICATIONS AND (B) EXPRESSES RESERVATIONS WHETHER IT IS WISE FOR USG PURSUE MATTER IF OUTCOME WILL NOT ULTIMATELY BE SUCCESSFUL. END SUMMARY.

2. EMB COMMENTS. EMB DEFERRED RESPONSE REFTEL PENDING POUCH RECEIPT AIDAC A-UNN OF JULY 31. WE HAVE SUBSEQUENTLY REVIEWED OPIC (WALSH) CLAIM REIMBURSEMENT PROPOSALS CONTAINED REFTEL AND HAVE FOLLOWING COMMENTS:

A. METHOD OF APPROACH. WE BELIEVE DIRECT EMBASSY-GOS APPROACH PREFERABLE FOR FOLLOWING REASONS: (1) USE OF WALSH NAME OR WALSH INVOLVEMENT IS DEFINITE LIABILITY IN VIEW PAST CONTENTIOUS STAND BY GOS THAT WALSH CLAIM FALLACIOUS, (2) MATTER IS NOW ONE OF DIRECT INTEREST USG-RELATED ORGANIZATION (OPIC) FOR WHOM WE ASSUME EMBASSY HAS A LEGITIMATE RESPONSIBILITY, (3) WALSH SHIELD IS NOT ONLY POROUS, GOS COULD ALSO CONSIDER IT A SUBTERFUGE WITH UNCLEAR PURPOSE, AND (4) OUR LEVERAGE ON THIS MATTER-SLIGHT AS IT MAY BE--IS RELATED TO GOS INTEREST IN (A) FACILITATING LIMITED OFFICIAL USE  
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US PRIVATE INVESTMENT IN SUDAN THROUGH OPIC AND, (B) LEGAL ASPECTS US-GOS INVESTMENT GUARANTY AGREEMENT. THERE WILL BE NO GOS CHAGRIN OVER WALSH.

B. TECHNIQUE. ON AN ISSUE AS COMPLEX AND HISTORICAL AS THIS, OUR POSITION SHOULD BE PRESENTED IN WRITTEN FORM TO ENABLE GOS BUREAUCRACY TO CONSIDER IT IN COORDINATED MANNER. AIDE-MEMOIRE WOULD BE MORE APPROPRIATE THAN FORMAL NOTE IN ORDER PROVIDE NEGOTIATING ROOM AND AVOID PRESENTING ISSUE IN A CONFRONTATION CONTEXT. GENERAL TONE OF AIDE-MEMOIRE SHOULD BE IN TERMS OF SEEKING FACILITATE US PRIVATE INVESTMENT IN SUDAN AND MIGHT USEFULLY INCLUDE REFERENCES TO (1) SHORT HISTORICAL REVIEW--INCLUDING OPIC SETTLEMENT ON CLAIMS RATIONALE (RATHER THAN EXPROPRIATION) WHICH HAS BY-PRODUCT OF PROTECTING GOS IMAGE, (2) LEGAL STATUS OF COUNTERPART FUNDS WHICH SUPPORTS USE FOR OPIC REIMBURSEMENT, (3) JUSTIFICATION FOR SEEKING REIMBURSEMENT UNDER INVESTMENT GUARANTY AGREEMENT, AND (4) INTIMATION USG RECOGNIZES GOS CONCERNS AND IS WILLING EXPLORE ARRANGEMENTS FOR SETTLING THE MATTER IN AN EQUITABLE MANNER, E.G., OFF-SETS.

C. CLARIFICATIONS. EMB WOULD APPRECIATE CLARIFICATION ON FOLLOWING MATTERS WHICH WILL ARISE IF REIMBURSEMENT ISSUE IS PURSUED:

(1) STATUS OF FAA 620(C) AND (E). GC MEMO INDICATES NEITHER WALSH CLAIM NOR OPIC PAYMENT ARE STATUTORY BAR TO RESUMPTION ECONOMIC ASSISTANCE. IS SUCH A DETERMINATION SUFFICIENTLY STRONG TO WITHSTAND LEGAL CHALLENGE? IS ANY CHALLENGE LIKELY?

(2) AVAILABILITY OPIC SERVICES. PARA 6 REFTTEL IMPLIES OPIC FACILITIES WILL BE DENIED FUTURE US INVESTORS IN SUDAN UNTIL OPIC RECEIVES REIMBURSEMENT. IS THIS OPIC LEGAL REQUIREMENT OR POLICY DECISION? IMPLEMENTATION-- PARTICULARLY IF IT DISRUPTED STERLING DRUG AND UNION CARBIDE PENDING INVESTMENTS (WHICH EMB WENT TO CONSIDERABLE LENGTHS FACILITATE)--WOULD HAVE DECIDEDLY NEGATIVE IMPACT. IF LEGAL, BELIEVE INTERPRETATION SHOULD BE REVIEWED FROM STANDPOINT THAT OPIC DETERMINED ONLY THAT WALSH CLAIM "WAS SUFFICIENTLY IN DESPUTE" LIMITED OFFICIAL USE  
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TO WARRANT SETTLEMENT. IF OPIC VIEW IS POLICY DECISION, ANY USE AS A NEGOTIATING PLOY SHOULD BE LIMITED BY THE CONSIDERATION OF DISRUPTION NOTED IN THIS PARA AND THE OVERALL RESERVATIONS IN PARA 5.

(3) FOREIGN EXCHANGE IMPACT. EMB ASSUMES ANY GOS REIMBURSEMENT IN SUDANESE POUNDS WOULD NOT BE CONVERTED TO FOREIGN EXCHANGE, BUT EFFECTED THROUGH EMBASSY-AID-OPIC ACCOUNTING PROCEDURES. FOR EXAMPLE, EMB COULD USE POUNDS FOR LOCAL OPERATING EXPENSES WITH APPROPRIATE CREDITS BEING TRANSFERRED IN WASHINGTON. ANY EXPECTATION GOS REIMBURSEMENT IN DOLLARS IS UNREALISTIC

IN VIEW (A) GOS FX POSITION AND (B) COULD RESULT IN CHARGES OF "LEFT HAND GIVETH (AID)-RIGHT HAND TAKETH AWAY (REIMBURSEMENT)".

(4) INVESTMENT GUARANTY AGREEMENT. ASSUME OUR RIGHT TO RAISE REIMBURSEMENT UNDER AGREEMENT IS SOLID. A POSSIBLE GROUND FOR GOS CHALLENGE IS THAT USG HAS NOT SOUGHT RECONFIRM THAT INVESTMENT GUARANTY HAS CONTINUED IN FORCE AS WE DID WITH USG-GOS 1958 AID AGREEMENT (RECONFIRMED 1973).

3. TIMING. IMPORTANT FACTOR AFFECTING TIMING ANY PROPOSAL FOR GOS REIMBURSEMENT IS SUDANESE USE OF RECENTLY APPROVED COUNTERPART FOR EMERGENCY TRANSPORTATION OF COMMODITIES. IT WOULD BE PREFERABLE TO WAIT UNTIL AFTER THOSE FUNDS ARE EXPENDED SO AS NOT TO TARNISH WHAT CURRENTLY APPEARS TO BE THE CONSIDERABLE GOOD WILL ENGENDERED BY OUR OFFER. SINCE THE OPIC CLAIM (LS90,000) EXCEEDS OUR EMERGENCY ASSISTANCE, THE PSYCHOLOGICAL REACTION WOULD BE POOR. ON PROCEDURAL SIDE, WE WOULD ALSO PREFER CONSULT IN ADVANCE WITH FORMER WALSH LAWYER KRONFLI WHO CURRENTLY ABROAD UNTIL FALL.

4. EMB RESERVATIONS. THE ABOVE COMMENTS REPRESENT THE EMBASSY'S RECOMMENDATIONS ON HOW TO PROCEED IF INSTRUCTED. HOWEVER, WE HAVE SERIOUS RESERVATIONS ANY APPROACH WILL BE SUCCESSFUL AND QUERY ACCORDINGLY WHETHER OUR INTERESTS ARE BEST SERVED BY DOING SO. THE RECORD OF THE WALSH CASE INDICATES AN ADAMANT GOS VIEW THAT WALSH DID NOT FULFILL THE OBLIGATIONS OF ITS CONTRACT AND THEREFORE LIMITED OFFICIAL USE  
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HAS NO CLAIM--A POSITION THAT WALSH'S OWN ATTORNEY (KRONFLI) ADMITS HAS MERIT AS REFLECTED IN THE GC MEMO.

5. THE PREDICTABLE GOS REACTION TO A USG APPROACH FOR REIMBURSEMENT WILL BE THAT THE OPIC DECISION DOES NOT OBLIGATE GOS TO PROVIDE COMPENSATION. THE SECOND GOS REACTION WILL BE THAT NO MATTER WHAT FINANCIAL SLEIGHT-OF-HAND IS APPLIED, THE SUDAN'S POTENTIAL FINANCIAL AVAILABILITIES FOR DEVELOPMENT WILL BE REDUCED BY REIMBURSEMENT TO WHAT IT CONSIDERS AN UNWORTHY CAUSE. IF ASTUTE, THEY CAN EVEN ARGUE THAT THEIR PERILOUS FX POSITION WILL BE AFFECTED IN DUE COURSE EVEN IF THE FUNDS ARE NOT CONVERTED SINCE THE RATE OF US EMB DOLLAR CONVERSION/EXPENDITURES WILL BE REDUCED. IN THESE CIRCUMSTANCES, PROBABILITY OF FAVORABLE GOS DECISION IS REMOTE AND WE PRESUME THAT UNDER PRESENT POLITICAL CONDITIONS AND US INTERESTS IN THE SUDAN, WE WOULD NOT BE PREPARED PUSH THE MATTER TO WHERE IT WOULD BECOME A MAJOR ISSUE. WE THUS QUERY WHETHER IT IS WISE TO BEGIN.FRITTS

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## Message Attributes

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**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
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